

FIRST DIVISION

[G.R. No. 182375, December 02, 2015]

**HADJA RAWIYA SUIB, PETITIONER, VS. EMONG EBBAH AND THE
HONORABLE COURT OF APPEALS, 22ND DIVISION, MINDANAO
STATION, CAGAYAN DE ORO CITY, RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

Before us is a Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the Court of Appeals Resolutions^[1] dated 9 October 2007 and 26 February 2008, in CA-G.R. SP No. 00985-MIN, for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The facts as culled from the records are as follows:

Petitioner Hadja Rawiya Suib's (Suib) husband, Saab Hadji Suib (deceased), was the owner of a parcel of land with a total area of 12.6220 hectares, located in Sapu Masla, Malapatan, Sarangani Province, covered by OCT No. P-19714, which he acquired through a duly notarized Deed of Absolute Sale from Sagap Hadji Taib on 14 December 1981.

Due to alleged illegal harvesting of coconuts from the subject property, Suib, in March 1990, filed a criminal case of qualified theft against respondent Emong Ebbah (Ebbah) before the Regional Trial Court (RTC), Branch 22 of General Santos City, docketed as Criminal Case No. 6385, which was re-raffled to the RTC, Branch 38 of Alabel, Sarangani Province.

As defense, Ebbah claimed that he has a right to harvest coconuts from the subject property because he was instituted as a tenant by Suib's deceased husband and has been such tenant since 1963. On the other hand, Suib claimed that it was impossible for her husband to institute tenancy in favor of Ebbah in 1963 because her husband acquired the subject property only in 1981.

The RTC dismissed the case on the ground of *res judicata* or bar by former judgment.^[2] It turned out that it was not the first time that Suib filed a criminal case of qualified theft against Ebbah. Suib previously filed a criminal case of qualified theft against Ebbah before the Municipal Trial Court (MTC) of Malapatan, docketed as Criminal Case No. 1793-M, which the MTC dismissed.^[3]

Ebbah then filed the present case against Suib before the Provincial Agrarian Reform Adjudication Board (PARAB) in Region XI, docketed as Case No. XI-0330-SC-90, on 31 January 1990. The case is for Immediate Reinstatement and Damages.

Finding the absence of a tenancy relationship between Suib and Ebbah, the PARAB, in a Decision^[4] dated 10 September 1993, dismissed the case for lack of merit.

On appeal to the Department of Agrarian Reform Adjudication Board Central Office (DARAB), the DARAB^[5] reversed the PARAB Decision. According to the DARAB, "[in] Republic Act No. 3844, [it] provides that in case there is doubt in the interpretation and enforcement of laws or acts relative to tenancy, it should be resolved in favor of the latter to protect him from unjust exploitation and arbitrary ejectment by unscrupulous landowners."^[6] The DARAB also ruled that:

An examination of the records reveal (sic) that Plaintiff-Appellant was on the land of Respondent-Appellee since 1963. It must be remembered that at the time Respondent-Appellee rejected Plaintiff-Appellant on 30 March 1990, the latter had already harvested thousands of coconuts and had already converted twenty-five (25) sacks of copra. There was also a sharing of the produce of the land between the parties. Undoubtedly, the requisites for the establishment of tenancy relation are present in this case. Moreover, the fact that they did not at all question his tenancy over the land in question for quite several years, there is an implied recognition or consent to the establishment of a tenancy relationship between the parties.^[7]

The dispositive portion of the DARAB Decision dated 5 June 1998 reads:

WHEREFORE, the decision appealed from is SET ASIDE and an (sic) new one entered:

1. Declaring Emong Ebbah a tenant of Hadji Rawiya Suib who is hereby ordered to respect and maintain Ebbah in the peaceful possession and cultivation of the subject landholding.

SO ORDERED.^[8]

The motion for reconsideration was likewise denied in a Resolution^[9] dated 21 December 1998.

To appeal the adverse Decision, Suib filed a Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure before the Court of Appeals on 7 April 2006.^[10] Without giving due course to the petition, the Court of Appeals issued a Resolution^[11] dated 10 May 2006, with the following directives:

- A) **REQUIRE** petitioner to **SUBMIT** a written explanation why copies of the petition were not personally served to the agency a quo and the adverse parties;
- B) **REQUIRE** petitioner to **SUBMIT** a legible copy of the subject DARAB decision duly certified by the proper authority and therein clearly indicated the designation of office of the person certifying to its authenticity;
- C) **REQUIRE** petitioner's counsel to **MANIFEST** in writing to this Court the place of issue of his IBP number;
- D) **REQUIRE** petitioner to **REMIT**, within a non-extendible period of five (5) days from notice, the amount of P1,180.00

- representing the balance in the payment of the docket fees for petitions with prayer for TRO and/or WPI;
- E) **REQUIRE** DARAB to show proof that copy of its Resolution dated December 21, 1998 denying petitioner's Motion for Reconsideration in DARAB Case No. 5402 was sent to petitioner and/or counsel of record;
 - F) **REQUIRE** DARAB to **INFORM** this Court if any motion to withdraw as counsel has been filed by Atty. Marcelino Valdez, and if any corresponding entry of appearance has been filed by Atty. Jose Jerry Fulgar, both as counsels for petitioner in DARAB Case No. 5402;
 - G) Without necessarily giving due course to the petition, **DIRECT** respondent to file a comment thereon (not a motion to dismiss), within ten (10) days from notice, and to **SHOW CAUSE** therein why the prayer for the issuance of a temporary restraining order and/or preliminary injunction should not be **GRANTED**. Petitioner may file a Reply within five (5) days from receipt of the Comment. Said Comment may be treated as Answer of respondent in the event the petition is given due course.^[12]

In partial compliance with the Resolution, Suib filed a Compliance^[13] and Supplement to Compliance^[14] dated 25 May 2006 and 29 May 2006, respectively, *sans* the DARAB Decision. Meanwhile, Suib sent a letter to DARAB-Koronadal City, requesting for a copy of the DARAB Decision.

Upon receipt of the DARAB Decision, Suib filed a 2nd Supplement to Compliance^[15] dated 2 June 2006 with the DARAB Decision finally attached.

Acting on the various supplements filed by Suib, the Court of Appeals, in a Resolution^[16] dated 9 October 2007, dismissed the petition for failure of Suib to submit the DARAB Decision pursuant to Section 7, Rule 43 in relation to Section 1(g) of Rule 50 of the Rules of Court.

Suib's Motion for Reconsideration with Compliance^[17] was likewise denied in a Resolution^[18] dated 26 February 2008. The dispositive portion of the Resolution reads:

On November 26, 2007, this Court issued a Resolution directing the private respondent to file a comment on the *Motion for Reconsideration with Compliance* filed by petitioner within a period of ten (10) days from receipt of notice of the said resolution. The same was received by the private respondent on November 8, 2007. On January 24, 2008, private respondent filed with this Court his Comment thru registered mail and a copy thereof was received by this Court on January 31, 2008.

A perusal of petitioner's Motion for Reconsideration with Compliance reveals that the directive of this Court May 10, 2006 requiring her to submit the DARAB decision was not complied with.

Accordingly, the Motion for Reconsideration with compliance is hereby denied.

SO ORDERED.^[19] (Citations omitted).

Hence, this petition accusing the Court of Appeals of grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing Suib's appeal for failure to timely file a copy of the appealed DARAB Decision together with her petition.

The petition is devoid of merit.

Before proceeding to resolve the question on jurisdiction, the Court deems it proper to address the penultimate issue of procedural error which Suib committed.

Suib availed of the wrong remedy by filing the present special civil action for *certiorari* under Rule 65 of the Rules of Court to assail a final judgment of the Court of Appeals. Suib should have filed a petition for review under Rule 45 of the Rules of Court.

A special civil action for *certiorari* under Rule 65 is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction and it will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law; it cannot be a substitute for a lost appeal.^[20] In the case at bar, Suib is not without any plain, speedy, and adequate remedy as the remedy of an appeal is still available. Hence, the present petition for *certiorari* will not prosper even if the ground is grave abuse of discretion.^[21]

In cases where the petitioner availed of the wrong remedy, the Court, in the spirit of liberality and in the interest of substantial justice, has the right to treat the petition as a petition for review: (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.^[22]

Consulting the records, we find that the present petition was filed within the reglementary period within which to file a petition for review under Rule 45, which also raised errors of judgment. In detail, after receipt of the assailed Resolution dated 26 February 2008, Suib filed a Motion for Extension of Time to File Petition (with Motion for Leave) on 3 April 2008, requesting for an additional thirty (30) days or until 3 May 2008 within which to file a petition for review under Rule 45 of the Rules of Court. However, on 2 May 2008, Suib filed a Petition for *Certiorari* under Rule 65, well within the reglementary period within which to file a petition for review under Rule 45, which was until 3 May 2008.

Therefore, the Court deems it proper and justified to relax the rules and, thus, treat the instant petition for *certiorari* as a petition for review.^[23]

Suib averred that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the petition due to Suib's failure to attach a copy of the DARAB Decision with the petition within a reasonable period.

We rule in the negative.